Supreme Court, U. S.
FILED
MAY 17 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1637

R. B. ROBINSON, INDIVIDUALLY AND AS NEXT OF FRIEND OF C. K. ROBINSON, A MINOR; AND IN A REPRESENTATIVE CAPACITY ON BEHALF OF ALL SETTLORS AND NATURAL PERSON BENEFICIARIES OF TRUSTS,

Petitioner,

vs.

STANLEY T. KUSPER, COUNTY CLERK OF THE COUNTY OF COOK, ET AL.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Petitioner, R. B. Robinson, individually and in a representative capacity on behalf of all settlors and natural person beneficiaries of Illinois trusts, petitions for a writ of certiorari to review the Judgment of the Supreme Court of Illinois in this case.

OPINION BELOW.

The decision of the Illinois Supreme Court is officially reported at 69 Ill. 2d 374. A copy of the decision is set forth in Petitioner's Appendix (App., pp. A1-A17).

JURISDICTION.

The Judgment of the Supreme Court of Illinois was entered on November 30, 1977. Petitioner filed a timely Petition for Rehearing which was denied on January 26, 1978. The Jurisdiction of this Court is invoked under 28 U. S. C. § 1257 (3). An extension of time to May 17, 1978 has been granted by this Court for the filing of this Petition.

QUESTIONS PRESENTED.

The questions presented are:

1) Whether the Supreme Court of Illinois in construing Article IX-A of the Illinois Constitution of 1870 as not exempting trusts for the benefit of natural persons from personal property taxation, has deprived petitioner, and the members of the class petitioner represents, of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States; and

2) Whether the Supreme Court of Illinois, in giving determinative effect to legislative activity carried out subsequent to, and in derogation of, rights intended to be granted by a constitutional amendment, has impaired the obligation of contracts in violation of Section 10 of Article I of the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

CONSTITUTION OF THE UNITED STATES:

Section 1 of the Fourteenth Amendment:

AMENDMENT [XIV.]

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 10 of Article I:

"Section 10. No State shall * * * * pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, * * * *."

ILLINOIS CONSTITUTION OF 1870:

Article IX-A:

"Section 1: Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals."

Section 2 of Article XIV:

"§ 2. Amendments to this Constitution may be proposed in either House of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the yeas and nays of each house thereon, shall be entered in full on their respective journals, and said amendments shall be submitted to the electors of this State for

adoption or rejection, at the next election of members of the General Assembly, in such manner as may be prescribed by law * * * *."

ILLINOIS CONSTITUTION OF 1970:

Section 5(b) of Article IX:

"§ 5. Personal Property Taxation

(a) * * * *.

(b) Any ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated.

(c) * * * *.

STATUTES:

Section 2 of "An Act to provide the manner of proposing amendments to the Constitution, and submitting the same to the electors of the State", approved March 14, 1877, as amended:

2. "The General Assembly in submitting an amendment to the Constitution to the electors, shall prepare a brief explanation of such amendment, a brief argument in favor of the same, and the form in which such amendment shall appear on the separate ballot . . . The minority of the General Assembly, if they so desire, may also prepare a brief argument against such amendment. * * * In addition to the notice hereby required to be published, the Secretary of State shall also cause the existing form of the constitutional provision proposed to be amended, the proposed amendment, the explanation of the same, the arguments for and against the same, and the form in which such amendment will appear on the separate ballot, to be published in pamphlet form in 8 point type or the equivalent thereto; and in cities, villages and incorporated towns having boards of election commissioners, the Secretary of State shall furnish such boards with a sufficient supply of such pamphlets to enable the boards to supply a copy thereof to every elector in their respective cities, villages and incorporated towns and such boards shall mail a copy of the

pamphlet to every registered elector in their respective municipalities at least 40 days prior to the election, and shall also supply copies thereof to every elector applying to them. In all counties, the Secretary of State shall furnish a sufficient supply of such pamphlets to the several county clerks to enable the clerks to supply a copy thereof to every elector in their respective counties, outside of cities, villages or incorporated towns that have a board of election commissioners and the county clerks shall mail a copy thereof to every such registered elector in their respective counties not less than 40 days prior to the election and shall also supply copies thereof to every elector applying for them. * * *" (Ill. Rev. Stat., 1975; Ch. 7½, § 2.)

STATEMENT.

A. Legislative Background of Article IX-A of the Illinois Constitution of 1870.

On June 30, 1969, the Illinois General Assembly adopted Senate Joint Resolution No. 30 (Appendix pp. A18-A22) providing for the submission to the electorate of a proposed constitutional amendment to the Illinois Constitution of 1870. The proposed amendment provided as follows:

ARTICLE IX-A

"Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals."

The General Assembly also appointed a special committee to prepare a report on the proposed amendment. The Report of the Committee, as originally prepared, contained the following language:

"that which is owned by natural persons is exempted from taxation; that which is owned by corporations, trusts, etc., is subject to taxes." (Appendix p. A27).

However, before approval by the General Assembly, this language was corrected to read as follows: "that which is owned by *or held in a fiduciary capacity for the benefit of* natural persons is exempted from taxes; that which is owned by corporations, [trusts,] etc., is subject to taxes" (added language *underlined*, deleted language in brackets). Both the Illinois House on May 6, 1970, and the Illinois Senate on May 7, 1970, approved and adopted the corrected Report. The approved corrected Report, pursuant to the requirements of law, was then published in pamphlet form by the Illinois Secretary of State and mailed to every registered voter prior to the general election of November 3, 1970. The proposed constitutional amendment to add

Article IX-A to the Illinois Constitution was adopted by the voters; was declared ratified on November 25, 1970, and became effective on January 1, 1971.

Subsequent to the adoption of the corrected Report by the Illinois General Assembly, which Report was mailed to the voters, the Illinois Senate on May 19, 1970, adopted Senate Joint Resolution No. 67 (Appendix p. A44), which said Senate Joint Resolution was concurred in by the House on May 29, 1970 (Appendix p. A45). Senate Joint Resolution No. 67, which was not adopted in accordance with Section 2 of Article XIV of the Illinois Constitution of 1870 or the provisions of the Act regarding the manner of submitting constitutional amendments to the voters and which was never mailed to the voters, provided, in part, as follows: *"by the use of the phrase 'as to individuals,' this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common."* (Appendix pp. A44-45)

Following the adoption of Article IX-A, the Attorney General of the State of Illinois, as well as the State's Attorney of Cook County, Illinois, issued opinions to the effect that personal property held by fiduciaries for the benefit of natural persons was exempt from taxation under the Article. (Appendix pp. A47 and A51)

Section 5(b) of Article IX of the Illinois Constitution of 1970, adopted by the voters on December 15, 1970, provided as follows: "Any ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated." On March 2, 1973, the Attorney General issued a second opinion to all county treasurers in the State of Illinois again stating that all personal property held in trust for the benefit of an individual was exempt under said Article IX-A of the Illinois Constitution of 1870. (Appendix p. A49)

B. Prior Litigation Concerning Article IX-A.

Subsequent to the adoption of Article IX-A, three class actions were filed questioning its constitutionality: *Lake Shore Auto Parts* v. *Korzen* and *Shapiro* v. *Barrett*, both filed in the Circuit Court of Cook County, Illinois; and *Maynard* v. *Barrett*, filed as an original action before the Illinois Supreme Court. These cases were consolidated in the Illinois Supreme Court under the caption *Lake Shore Auto Parts* v. *Korzen*.

On July 9, 1971, the Illinois Supreme Court in *Lake Shore Auto Parts* held that Article IX-A's distinction between individuals and corporations violated the equal protection clause of the Fourteenth Amendment to the United States Constitution (*Lake Shore Auto Parts Co.* v. *Korzen*, 49 Ill. 2d 137, 151). A Petition for a Writ of Certiorari was granted by this Court, which on February 22, 1973, reversed the decision of the Illinois Supreme Court and held that Article IX-A in exempting individuals from and continuing to subject corporations to personal property taxation did not violate the equal protection of the law provisions of the Fourteenth Amendment (*Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U. S. 356). Trusts were not represented in these cases or mentioned in the opinion of this Court.

Following remand the Illinois Supreme Court issued a Supplemental Opinion, holding that "*Trustees and other fiduciaries, whether corporate or not, do not own property as natural persons, and they were not exempted from taxation by Article IX-A*". (*Lake Shore Auto Parts Co.* v. *Korzen*, 54 Ill. 2d 237, 239).

Following the Supplemental Opinion by the Illinois Supreme Court, two actions were filed in the Circuit Court of Cook County, Illinois, entitled *Hanley* v. *Kusper* and *Continental Illinois National Bank & Trust Company of Chicago* v. *Kusper*. In both of these cases a declaration was sought that Article IX-A exempted from taxation personal property held by fiduciaries for the benefit of natural persons. The trial judges in the two cases reached opposite conclusions on the point. Appeals were taken

in both cases which were consolidated in the Illinois Supreme Court.

On September 26, 1975, the Illinois Supreme Court issued its opinion in the consolidated *Hanley* and *Continental Bank* cases (*Hanley* v. *Kusper*, 61 Ill. 2d 452). The Court continued to hold *voluntary* trusts not exempt from personal property taxation under Article IX-A, but overruled its prior decision in *Lake Shore Auto Parts Co.* v. *Korzen*, 54 Ill. 2d 237, by holding that *involuntary* trusts are exempt.

The Present Case.

Petitioner filed this action in the Circuit Court of Cook County, Illinois. In her Second Amended Complaint, Petitioner alleged that she was a registered voter of Illinois and had voted in favor of the proposition to add Article IX-A to the Illinois Constitution of 1870, at the general election held on November 3, 1970, and also had voted in favor of the adoption of the 1970 Constitution of Illinois, at the special election held on December 15, 1970. Prior to voting on the proposition to add Article IX-A to the 1870 Constitution, Petitioner read the official pamphlet mailed to her and other Illinois voters which specifically stated, in the portion of the pamphlet devoted to arguments against the proposed amendment, that personal property "*which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes . . .*"

Petitioner further asserted that in voting favorably on the 1970 Illinois Constitution she believed that Section 5(b) of Article IX thereof prohibited the reinstatement of the *ad valorem* tax on personal property held in trust for the benefit of natural persons, which she had understood from the pamphlet had been abolished by Article IX-A of the 1870 Constitution.

Petitioner further asserted that Senate Joint Resolution No. 67 (Appendix pp. A44-A45) of the Seventy-sixth General Assembly of Illinois was never mailed to the Petitioner and that the contents

of said Resolution were never made known to the Petitioner or to the electorate in any manner whatsoever prior to the elections of November 3 and December 15, 1970.

On December 23, 1970, after both Article IX-A of the 1870 Constitution and the 1970 Constitution had been ratified by the voters, and in reliance on the statement of the Illinois General Assembly that property held in trust for the benefit of natural persons was exempt from personal property taxation under Article IX-A and could not be reinstated under Section 5(b) of Article IX of the 1970 Illinois Constitution, petitioner created an irrevocable trust for the benefit of her son and daughter.

Petitioner further asserted that the defendant officials of Cook County, notwithstanding the foregoing, continued to assess and collect personal property taxes on the personal property held in the irrevocable trust for the tax years 1972, 1973, 1974 and 1975.

The Petitioner further alleged on behalf of herself and the classes she represents, that the Fourteenth Amendment to the Constitution of the United States; Article IX-A of the Illinois Constitution of 1870 and Section 5(b) of Article IX of the Illinois Constitution of 1970 all prohibit the *ad valorem* taxation of personal property held in trust for the benefit of natural persons, including the personal property held in the irrevocable trust for the benefit of her son and daughter. The trial court rejected Petitioner's contentions and sustained the taxation of the trust. On direct appeal, the Supreme Court of Illinois affirmed the lower court decision.

STAGE OF THE PROCEEDING AT WHICH THE FEDERAL QUESTIONS WERE RAISED.

In Petitioner's Second Amended Complaint, she asserted that the Fourteenth Amendment to the Constitution of the United States, prohibits the *ad valorem* taxation of personal property held in trust in Illinois for the benefit of natural persons under the facts of this case.

The additional federal question sought to be reviewed which arose for the first time by reason of the Judgment of the Supreme Court of Illinois is whether there has been an impairment of Petitioner's contract rights in violation of Section 10 of Article I of the Constitution of the United States.

REASONS FOR GRANTING THE WRIT.

I. THE DECISION OF THE SUPREME COURT OF ILLINOIS IN HOLDING TRUSTS FOR THE BENEFIT OF NATURAL PERSONS SUBJECT TO PERSONAL PROPERTY TAXATION, DESPITE CLEAR LEGISLATIVE INTENTION AND VOTER UNDERSTANDING TO THE CONTRARY, HAS DEPRIVED PETITIONER OF HER PROPERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Petitioner submits that the Illinois Supreme Court, in refusing to give effect to the express representations made to petitioner and others by the Illinois General Assembly, an equal and coordinate branch of state government, deprived her and the members of the class she represents of their property without due process of law.

In order to insure that the electorate would be fully informed when voting on Constitutional Amendments, the Illinois General Assembly, in 1877, enacted a law providing for the manner of submitting constitutional amendments to the Illinois electorate. (Ill. Rev. Stat. 1975, Ch. 7½, Sec. 1-8)

The provisions of that Act require the Illinois General Assembly, in submitting a constitutional amendment to the electorate, to prepare a brief explanation of the amendment, a brief argument in favor of the same and the form in which such amendment will appear on a separate ballot, and authorizes a minority of the General Assembly to prepare a brief argument against the proposed amendment. The Act further requires that the proposed amendment, the explanation of the same, the arguments for and against the same, and the form in which the proposition will appear on the ballot be published in pamphlet form by the Illinois Secretary of State and mailed to every voter in the State of Illinois at least 40 days in advance of the election at which the proposition is to be voted upon by the electorate.

The report on Article IX-A, as initially prepared by the Committee, contained the following statements in the portion of the report devoted to arguments against the proposed amendment:

> *"—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by natural persons is exempted from taxes; that which is owned by corporations, trusts, etc., is subject to taxes."*
>
> *"It will be almost impossible to administer . . . because the location . . . of shares of intangibles not owned by individuals . . . can be shifted out of State, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation or trust."* (Appendix p. A27.)

The Illinois General Assembly refused to approve the report as so prepared. Only after the committee corrected the first statement to state that:

> *"—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes."* (Appendix p. A32)

and deleted the words *"or trust"* from the second statement, was the report approved by the Illinois General Assembly and mailed to all the voters in Illinois. Indeed, the *only* substantive change made in the committee report, after the General Assembly had refused to approve it, was to delete the statement that trusts were *taxable* and to substitute therefor the statement that trusts for natural persons were *exempt*.

Obviously there could have been no clearer showing of both legislative intent in proposing, and of voter understanding in adopting, Article IX-A. Both the intent and the understanding were that trusts for the benefit of natural persons were to be exempt from personal property taxation under Article IX-A.

The intended effect of Article IX-A was as evident to public officials of the State of Illinois as it was to Petitioner. Two written opinions by the Attorney General of Illinois (Appendix p. A47 and p. A49) and a written opinion by the then acting State's Attorney of Cook County (Appendix p. A51), each stated that personal property held in trust for the benefit of natural persons was exempt under Article IX-A. Affidavits of the leadership of the Seventy-Sixth General Assembly (Appendix pp. A53-A60), which proposed Article IX-A, were attached to the Petitioner's Complaint, and specifically attested to the fact that it was the intent of the Illinois General Assembly to exempt trusts for natural persons from personal property taxation. The Attorney General has again

reiterated this position in the case at bar, by filing, as amicus curiae, a Petition in the Supreme Court of Illinois requesting it to grant a rehearing and to hold trusts for the benefit of natural persons exempt from personal property taxation.

Under these circumstances, the question presented is whether it was arbitrary and capricious for the Illinois Supreme Court to ignore the clear intent of the Legislature and the understanding of the voters that trusts were exempted. This intent was clear to the Illinois public officials, legislators and voters. The Fourteenth Amendment to the Constitution of the United States protects United States citizens from arbitrary and capricious state action, whether that action be that of executive, legislative or judicial departments of state government. This Court has held that unwarranted and totally unanticipated construction of valid state enactments by state courts, applied retroactively, deprives citizens of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

In *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673 (1930), for example, this Court held that a decision of the Supreme Court of Missouri construing a valid state enactment deprived the plaintiff of due process of law. After noting that if the plaintiff's due process rights had been violated by an exercise of the state's legislative power the transgression would be obvious, this Court held that the same principles were applicable to acts of the judiciary:

> *"The violation is none the less clear when that result is accomplished by the state judiciary in the course of construing an otherwise valid (First Nat. Bank* v. *Weld County, 264 U. S. 450, 68 L.Ed. 784, 44 Sup.Ct.Rep. 385) state statute. The federal guaranty of due process extends to state action through its judicial, as well as through its legislative, executive, or administrative, branch of government."* (281 U. S. 673, 680.)

And in *Bouie* v. *Columbia*, 378 U. S. 347 (1964), this Court held that the construction of a criminal statute by the Supreme Court of South Carolina deprived the defendants of the due process of law guaranteed by the Fourteenth Amendment. In *Bouie*, a state statute prohibiting *"entry upon the lands of another. . . . after notice from the owner or tenant prohibiting such entry. . . ."* was construed to encompass the act of remaining on the premises of another after receiving notice to leave. This Court reversed:

> "When a statute on its face is narrow and precise, however, it lulls the potential defendant into a false sense of security, giving him no reason even to suspect that conduct clearly outside the scope of the statute as written will be retroactively brought within it by an act of judicial construction. If the Fourteenth Amendment is violated when a person is required 'to speculate as to the meaning of penal statutes,' as in *Lanzetta*, or to 'guess at (the statute's) meaning and differ as to its application' as in *Connally*, the violation is that much greater when, because the uncertainty as to the statute's meaning is itself not revealed until the court's decision, a person is not even afforded an opportunity to engage in such speculation before committing the act in question.
>
> "There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language." (379 U. S. 347 at 352.)

The same situation prevails in the instant case. When the Petitioner created an irrevocable trust for her adult son and daughter on December 23, 1970, she had previously been expressly advised in the Official Pamphlet (Appendix pp. A39 at A42) that personal property *"which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes"* under proposed Article IX-A. As a result of the Illinois Supreme Court's decision the property of the Petitioner, and the property of all settlors and natural persons who are

beneficiaries of trusts in Illinois, has been taken without due process of law.

II. THE SUPREME COURT OF ILLINOIS, IN GIVING DETERMINATIVE EFFECT TO LEGISLATIVE ACTIVITY CARRIED OUT SUBSEQUENT TO, AND IN DEROGATION OF, RIGHTS INTENDED TO BE GRANTED BY AN AMENDMENT TO THE ILLINOIS CONSTITUTION, HAS IMPAIRED THE OBLIGATION OF CONTRACT IN VIOLATION OF SECTION 10 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES.

The Illinois Supreme Court, in holding that trusts for the benefit of natural persons were not exempt from personal property taxation under Article IX–A, did so in reliance upon a resolution adopted by the Illinois General Assembly subsequent to the approval of the statutorily required report of the proposed amendment mailed to the voters. In so doing, the decision of the Court has raised the question of whether such subsequent legislative action has impaired the obligation of contracts in violation of Section 10 of Article I of the Constitution of the United States.

The Official pamphlet report of the Illinois General Assembly containing the statutorily required explanation of Article IX–A, and the arguments for and against the adoption of Article IX-A, which contained the express statement that personal property *"which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes"* was unanimously approved by the Illinois House of Representatives on May 6, 1970 (Appendix p. .....) and by the Illinois Senate on May 7, 1970 (Appendix p. .....). It was this pamphlet which was mailed to the Illinois electorate.

Subsequently, the Illinois General Assembly adopted Senate Joint Resolution No. 67. In that resolution it was stated that by the use of the phrase "*as to individuals*" in the proposed amendment the Illinois General Assembly "*intended to mean a*

natural person, or two or more natural persons as joint tenants or tenants in common". This resolution to which the Illinois Supreme Court gave decisive effect in reaching its decision in this case was adopted by the Illinois Senate on May 19, 1970 (Appendix p. A44) and by the Illinois House on May 29, 1970 (Appendix p. A45). Resolution No. 67 was never adopted by the Illinois General Assembly in accordance with the Illinois constitutional and statutory requirements concerning the manner of submitting constitutional amendments to the Illinois electorate. (First, the resolution did not receive a simple majority of the members of the House, having received a total of 84 aye votes (Appendix pp. A45-A46), some five votes less than the simple majority required by the House to enact a Bill into law; and second, the Resolution was not accompanied by an explanation, arguments and the form of the ballot). Further Senate Joint Resolution No. 67 was never mailed to, or otherwise, in any manner, disseminated to, the Illinois electorate prior to their ratification of Article IX–A.

There can be no doubt but that had the Illinois General Assembly adopted Senate Joint Resolution No. 67 *subsequent to* December 23, 1970, when Petitioner created her trust, there would have been a classic issue of whether the state by subsequent legislative action had impaired the obligation of contract in violation of Section 10 of Article I of the Constitution of the United States. We respectfully submit that a clear cut issue remains where the subsequent legislative action relied upon by the Illinois Supreme Court was never made known to Petitioner or to the Illinois electorate. To hold otherwise would be to permit citizens to be charged, as a matter of law, with knowledge of legislative action shown only on the official journals of state legislatures but not communicated or otherwise made known to its citizens.

In 16 Am. Jur. 2d, Constitutional Law, § 452 at page 801 it is stated:

> "* * *, constitutional protection exists as against a judicial decision which so construes a state constitution or statute that the constitution or statute effects an impairment of contract obligations."

This Court has held that trusts for the benefit of natural persons "*are contracts within the meaning of the contract clause of the Federal Constitution*". (See *Coolidge* v. *Long*, 282 U. S. 582, 595 (1931.)

This Court has also stated that when a "*state court, either expressly or by necessary implication, gives effect to a subsequent law of the state whereby the obligation of the contract is alleged to be impaired a Federal question is presented*" and it becomes the duty of this Court "*to take jurisdiction and to determine the existence and validity of the contract, what obligations arose from it, and whether they are impaired by the subsequent law.*" *Cross Lake Shooting and Fishing Club* v. *State of Louisiana*, 224 U. S. 632, 639 (1912). In *Columbia Railway, Gas & E. Co.* v. *South Carolina*, 261 U. S. 236, 244, 245 (1923), this Court held that a contract was impaired by a statute as applied by the state court, stating:

> "As this court has repeatedly ruled, the Constitution affords no protection as against an impairment by judicial decision. * * * But, although the state court may have construed the contract and placed its decision distinctly upon its own construction, if it appear, upon examination, that, in real substance and effect, force has been given to the statute complained of, our jurisdiction attaches."

The Illinois Supreme Court, in the instant case and in two prior decisions, has held that trusts for the benefit of natural persons are not exempt under Article IX-A and, in so doing, has relied on the subsequent Senate Joint Resolution No. 67 (Appendix pp. A44-A45) and has refused to give effect to the prior legislative report (Official Pamphlet—Appendix p. A39) of the Illinois General Assembly which specifically stated that trusts for the benefit of natural persons are exempt under Article IX-A.

In the original *Lake Shore Auto Parts Co.* v. *Korzen* case, 49 Ill. 2d 137, at 148, the Illinois Supreme Court concluded, in the language of the Senate Joint Resolution No. 67,

> "that the meaning of Article IX-A is that ad valorem taxation of personal property owned by a natural person or by two or more natural persons as joint tenants or tenants in common is prohibited."

In the Illinois Supreme Court's Supplemental Opinion on remand from the United States Supreme Court, in *Lake Shore Auto Parts Co.* v. *Korzen*, 54 Ill. 2d 237, 238, it continued to adhere to the foregoing construction of Article IX-A.

The Illinois Supreme Court's continued reliance on Senate Joint Resolution No. 67, and its refusal to give effect to the Illinois General Assembly's clear statement of exemption in the Official Pamphlet, was manifested a third time in *Hanley* v. *Kusper*, 61 Ill. 2d 452, wherein the Court stated at pages 460 and 461:

> "That explanation of the resolution is inadequate, it ignores the emphasis that was placed upon ownership by a natural person, or two or more natural persons as joint tenants or tenants in common."

The Supreme Court of Illinois, in the instant case, continues to persist in its reliance on Senate Joint Resolution No. 67 in interpreting Article IX-A by continuing to adhere to its prior opinions. (*American National Bank and Trust Company of Chicago* v. *Kusper*, 69 Ill. 2d 374—See Appendix pp. A1-A17 at pp. A16 and A17). In rejecting the prior legislative action set forth in the Official Pamphlet mailed to the electorate, stating that trusts for natural persons were exempt from taxation, and in relying upon the subsequent Senate Joint Resolution No. 67 (Appendix pp. A44-A45), the Illinois Supreme Court has given Senate Joint Resolution No. 67 the effect of law in construing Article IX-A.

This Court has stated that "*the jurisdiction of this Court does not depend upon the form in which the legislative action is expressed, but rather upon its practical effect and opera-*

tion as construed and applied by the state court of last resort, and this irrespective of the process of reasoning by which the decision is reached, or the precise extent to which reliance is placed upon the subsequent legislation." Detroit United Railway v. *Michigan*, 242 U. S. 239, 247 (1916).

The fact, therefore, that the subsequent legislative action of the Illinois General Assembly was in the form of the adoption of a resolution, does not prevent the federal question of impairment of contracts from arising. This Court has many times noted that if the United States Supreme Court were bound by decisions of state courts of last resort in construing rights acquired under contracts alleged to have been impaired by subsequent legislation, there would never be a case involving impairment of contracts which could be presented to this Court.

In *Terre Haute & Indianapolis Railroad Company* v. *State of Indiana*, 194 U. S. 579 (1904), this Court had occasion to note under similar circumstances that a State Court, while claiming that it was using a subsequent legislative enactment only for the purpose of construing a prior enactment, was in fact giving effect to the subsequent enactment and thereby impaired the obligation of contract.

In determining whether contract rights have been impaired, the law in existence at the time the contract was entered into is alone to be considered, and the subsequent legislation is to be considered only to determine if thereby, here has been an impairment of the obligation of contract.

Under the law in existence on the date Petitioner created her trust for her son and daughter, trusts for natural persons were exempt from personal property taxation under Article IX-A. On April 25, 1973, when the Supreme Court of Illinois held, in *Lake Shore Auto Parts Co.* v. *Karzen*, 54 Ill. 2d 237, that trusts for natural persons were not exempt from personal property taxation and gave decisive effect to Senate Joint Resolution No. 67 in arriving at such an interpretation of Article IX-A, we respectfully submit that the subsequent Senate Joint Resolution No. 67 impaired the obligation of contract.

CONCLUSION.

For the foregoing reasons, it is respectfully requested that this Court grant this Petition and review the decision of the Supreme Court of Illinois on writ of certiorari.

Respectfully submitted,

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